

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

IN RE THORNBURG MORTGAGE,  
INC. SECURITIES LITIGATION

Case No. CIV 07-815 JB/WDS

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**MOTION TO DISMISS CONSOLIDATED AMENDED COMPLAINT BY  
DEFENDANTS THORNBURG MORTGAGE, INC., GARRETT THORNBURG, LARRY  
A. GOLDSTONE, JOSEPH H. BADAL, PAUL G. DECOFF, CLARENCE D. SIMMONS,  
ANNE-DRUE M. ANDERSON, DAVID A. ATER, ELIOT R. CUTLER, IKE KALANGIS,  
OWEN M. LOPEZ, FRANCIS I. MULLIN, JR., AND STUART C. SHERMAN**

COME NOW defendants Thornburg Mortgage, Inc. (“Thornburg”), Garrett Thornburg, Larry A. Goldstone, Joseph H. Badal, Paul G. Decoff, Clarence D. Simmons, Anne-Drue M. Anderson, David A. Ater, Eliot R. Cutler, Ike Kalangis, Owen M. Lopez, Francis I. Mullin, Jr., and Stuart C. Sherman (the “Thornburg Defendants”), who by and through their counsel of record, Thompson, Hickey, Cunningham, Clow & April, P.A. (David F. Cunningham), Rubin Katz Law Firm, P.C. (Frank T. Herdman), and Heller Ehrman LLP (Robert B. Hubbell, Robert G. Badal, Jeffrey A. Richmond, and Paul B. Foust) move this Court for an order dismissing plaintiffs’ consolidated amended complaint (“CAC”).

The motion is based on Rules 12(b)(6) and 8(a) of the Federal Rules of Civil Procedure, the provisions of the Securities Exchange Act of 1934, the Securities Act of 1933, and the Private Securities Litigation Reform Act of 1995, and Article III of the United States Constitution. As grounds for the motion, the Thornburg Defendants state as follows:

1. Plaintiffs' first two claims for relief fail because plaintiffs have not alleged with particularity facts supporting a strong inference that each of the defendants sued in connection with those claims acted with intent to deceive, manipulate, or defraud.

2. Plaintiffs' first two claims for relief also fail because plaintiffs have not alleged with particularity facts demonstrating that each of the defendants sued in connection with those claims made statements during the class period regarding Thornburg or its securities that were materially false or misleading when made.

3. Plaintiffs' third, fourth, and fifth claims for relief fail with respect to Thornburg's May 2007 public offering because a lack of causation is evident on the face of the CAC.

4. Plaintiffs' third, fourth, and fifth claims for relief fail with respect to Thornburg's September 2007 and January 2008 public offerings because no lead or named plaintiff has standing to assert such claims.

5. Plaintiffs' third, fourth, and fifth claims for relief fail entirely because plaintiffs have not alleged facts demonstrating that any defendant is responsible for a material misstatement in the relevant offering materials that was false when made, or a material omission of a matter required to be stated or necessary in order to make an affirmative representation not false or misleading when made.

6. Because of the dispositive nature of this motion, the Thornburg Defendants have not requested the plaintiffs' concurrence.

The Thornburg Defendants respectfully direct the Court's attention to the arguments and authorities presented in their supporting memorandum, filed contemporaneously herewith.

WHEREFORE, the Thornburg Defendants request that this Court grant their motion, dismissing all of plaintiffs' claims with prejudice, for their costs of suit, and for such other relief as this Court deems proper.

Dated: September 22, 2008

Respectfully submitted,

THOMPSON, HICKEY, CUNNINGHAM,  
CLOW & APRIL, P.A.

By /s/ David F. Cunningham  
David F. Cunningham (dfc@catchlaw.com)  
460 St. Michael's Drive  
Santa Fe, New Mexico 87501  
Telephone: (505) 988-2900  
Facsimile: (505) 988-2901

RUBIN KATZ LAW FIRM, P.C.  
Frank T. Herdman (fherdman@rubinkatzlaw.com)  
123 E. Marcy St., Suite 200  
Santa Fe, New Mexico 87501  
Telephone: (505) 982-3610  
Facsimile: (505) 988-1286

HELLER EHRMAN LLP  
Robert Hubbell (robert.hubbell@hellerehrman.com)  
Robert Badal (robert.badal@hellerehrman.com)  
Jeffrey Richmond (jeff.richmond@hellerehrman.com)  
Paul Foust (paul.foust@hellerehrman.com)  
333 S. Hope Street, 39th Floor  
Los Angeles, California 90071  
Telephone: (213) 689-0200  
Facsimile: (213) 614-1868

*Attorneys for Defendants Thornburg Mortgage, Inc.,  
Garrett Thornburg, Larry Goldstone,  
Clarence Simmons, Anne-Drue Anderson,  
David Ater, Joseph Badal, Eliot Cutler,  
Ike Kalangis, Owen Lopez, Francis Mullin,  
Stuart Sherman and Paul Decoff*

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22<sup>nd</sup> of September, 2008, I filed the foregoing motion electronically through the CM/ECF system, which caused the parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

Robert Badal  
Robert.badal@hellerehrman.com

Cody Kelley  
ckelley@ckelleylaw.com

Stuart L. Berman  
sberman@sbtclaw.com

Michelle M. Newcomer  
mnewcomer@sbtclaw.com

Turner W. Branch  
tbranch@branchlawfirm.com

Jeffrey Richmond  
Jeff.richmond@hellerehrman.com

Aaron L. Brody  
abrody@ssbny.com

Rachele R. Rickert  
Rickert@whafh.com

Tammy D. Cummings  
tcummings@sbtclaw.com

Richard A. Russo  
rrusso@sbtclaw.com

Clifford K. Atkinson  
cliff@atkinson-thal.com

Richard A. Sandoval  
rsandoval@branchlawfirm.com

Gregg Vance Fallick  
gvf@fallicklaw.com

Andrew G. Schultz  
aschultz@rodey.com

Paul B. Foust  
paul.foust@hellerehrman.com

Evan J. Smith  
esmith@brodsky-smith.com

Francis M. Gregorek  
gregorek@whafh.com

Benjamin J. Sweet  
bsweet@sbtclaw.com

Sean M. Handler  
shandler@sbtclaw.com

Curtis Victor Trinko  
ctrinko@trinko.com

Frank T. Herdman  
fherdman@rubinkatzlaw.com  
kbartlett@rubinkatzlaw.com

Shane C. Youtz  
shane@youtzvaldez.com

Robert Hubbell  
Robert.hubbell@hellerehrman.com

Nancy Kaboolian  
nkaboolian@abbeygardy.com

Charlotte Itoh  
citoh@ckelley.com

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/s/ David F. Cunningham